

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

PIERRE GERMAN

Plaintiff,

v.

Case No.: _____

UNITED STATES OF AMERICA,
UNITED STATES OF AMERICA, d/b/a
Veterans Affairs Medical Center – Memphis, a/k/a
VA Hospital - Memphis

Defendants.

COMPLAINT

INTRODUCTION

COMES NOW, Plaintiff, Pierre German, individually, pursuant to the amendments to the Tennessee Healthcare Liability Act particularly T.C.A. 29-26-101, *et seq.* effective October 1, 2008, in compliance with the Federal Tort Claims Act (“FTCA”) sections 1346(b) and 2671-2680 title 28, United States Code and brings this Health Care Liability action for his individual claims. Plaintiff is bringing this action against the Defendants, United States of America and United States of America d/b/a Veterans Affairs Medical Center – Memphis, a/k/a VA Hospital Memphis, for the violations of the medical standard of care that occurred in Shelby County, Tennessee beginning in January 2020 and first discovered, at the earliest, on February 18, 2020, consisting of acts and omissions of medical negligence by the medical personnel/staff providing medical care, treatment and services to Plaintiff, Pierre German at the Memphis VA Medical Center located in Memphis, Shelby County, Tennessee. These violations of the medical standard of care occurred in Memphis, Shelby County, Tennessee in January of 2020 and were first discovered, at the earliest, on February

18, 2020, consisting of acts and omissions constituting medical negligence that were the direct and proximate cause of the personal injuries, deterioration of health that Mr. German has suffered. At the time of the alleged acts and omissions giving rise to this Health Care Liability action the care providers including those identified in this Complaint upon information and belief were employees, agents, servants and/or representatives of the Defendants, United States of America and United States of America d/b/a Veterans Affairs Medical Center – Memphis, a/k/a VA Hospital - Memphis and provided medical care, treatment and services to said Defendants' patient, Plaintiff, Pierre German.

PARTIES, VENUE AND JURISDICTION

1. At all times pertinent to this matter Plaintiff, Pierre German was a resident of the state of Tennessee, legal citizen of the United States of America and veteran of the United States Military. Mr. German is a veteran citizen of the United States of America and as such was entitled to receive health care at the Memphis VA Medical Center.

2. All of the medical care, treatment, and services giving rise to this cause of action were provided to Pierre German at the Memphis VA Medical Center and rendered by the medical personnel/staff of said Defendants as set out below and later identified or discovered in the medical files, charts and records of Pierre German maintained by the Defendants' custodians, agents, servants, employees and representatives. Therefore, all medical care and treatment was provided in Memphis, Shelby County, Tennessee.

3. The Defendant, United States of America is a governmental entity that among other things has taken on the responsibility of providing medical care, treatment and services to its veterans/patients who have served in the Armed Forces at various medical facilities known as VA Medical Centers and/or VA Hospitals. This Defendant, United States of America d/b/a Veterans Affairs Medical Center – Memphis owned and operated the medical facility known as Memphis

VA Medical Center located in Memphis, Shelby County, Tennessee and engaged in the business of providing medical care, treatment and services to its veterans/patients including Plaintiff, Pierre German by employing and contracting with physicians, residents, nurses, technicians, assistants, therapists, specialized skilled medical professionals, medical personnel/staff and administrative staff. Therefore, any act or omission of medical negligence on the part of the care providers of Pierre German, if they are found guilty, should be imputed to the named Defendants, United States of America and United States of America d/b/a Memphis VA Medical Center under the legal theory/doctrine of *Respondeat Superior* based on the employee, servant, agent and/or representative relationship of the medical care providers with the United States of America and United States of America d/b/a Memphis VA Medical Center. Defendants may be served with service of process as directed on the Summonses issued in this Cause.

4. Plaintiff further alleges that an agency relationship existed between all of the care providers of Pierre German, while at the Memphis VA Medical Center, with the named Defendants in their duties and responsibilities as the care providers of the veterans/patients based on the employees, agents, servants and/or representatives relationship therefore any act or omission of medical negligence on the part of any one care provider of Pierre German, if found guilty, should be imputed to the other care providers, included but not limited to the care providers identified in this Complaint, under the legal theory/doctrine of *Respondeat Superior*.

5. All medical care and treatment applicable to Plaintiff's cause of action against the named Defendants, their agents, servants, employees and/or representatives being the care providers of Pierre German occurred at the Memphis VA Medical Center or outlying VA Clinics in Memphis, Shelby County, Tennessee and was provided by the treating medical personnel/staff, employees, agents, servants, and/or representatives of the United States of America and United States of America d/b/a Memphis VA Medical Center.

6. Venue and jurisdiction are proper before this Court based on the original and exclusive jurisdiction conferred by the FTCA. This is a FTCA claim arising from acts or omissions constituting medical negligence that occurred in Memphis, Shelby County, Tennessee. Additionally, this Complaint is filed pursuant to the FTCA, section 1346(b) *et seq.* Title 28, U.S.C. which provides that a tort claim that is administratively denied or that has failed to be denied within 6-months may be presented to a Federal District Court for judicial consideration, and therefore presents a Federal Question. Such a suit must be initiated within six months after the date of the mailing of the notice of final denial as shown by the date of this letter (section 2401(b), Title 28 U.S.C.). Previously, Plaintiff filed his FTCA claim by letter dated October 15, 2020 sent via FedEx, that date, to the Office of Regional Counsel, Region 8 Nashville and was received by the noticed care provider, as documented by the FedEx tracking on October 21, 2020, signed for by M. Kennedy. The Office of General Counsel for the Department of Veterans Affairs and the Memphis VA Medical Center were also copied on the October 15, 2020 correspondence and were sent via regular mail to their respective addresses. An additional letter was sent via FedEx to Office of Regional Counsel, Region 8 on April 27 and was noted to be delivered on April 30, 2021, signed for by M. Kennedy according to the FedEx tracking. Further, Plaintiff received on August 3, 2021 a denial letter from the VA. Therefore, it has been longer than 6-months since Plaintiff presented his claims to the VA and his claim has been denied by the VA. As such, Plaintiff, Pierre German is electing to bring suit at this time.

7. Plaintiff alleges that this Court has jurisdiction of this Cause pursuant to the FTCA, Title 28, U.S.C. section 1346(b) *et seq.* and this Court's pendent or supplemental jurisdiction pursuant to 28 U.S.C. 1367 *et seq.*

8. Plaintiff, Pierre German is exercising his right to file suit in accordance with the FTCA, Sections 1346(b) and 2671-2690, title 28 U.S.C., which provides a tort claim that is

administratively denied by or has not been denied within 6 months of receipt may be presented to a Federal District Court for judicial consideration with said suit to be initiated within six months after the date of the mailing of the notice of final denial.

9. Plaintiff avers that he has complied with state law requirements for commencing a health care liability action by having fully complied with the Health Care Liability Act, T.C.A. 29-26-121 and T.C.A. 29-26-122, as evidenced by the filing of the appropriate documents and pleading with the Court. Specifically, pursuant to T.C.A. 29-26-121 a Certificate of Mailing is attached along with the Affidavit of Christopher W. Lewis who mailed the notice letters. Additionally, pursuant to T.C.A. 29-26-122 the Certificate of Good Faith is also filed contemporaneously with this Complaint.

10. Plaintiff will further show that the kind of injuries he has sustained were foreseeable and preventable and would not have occurred except for the acts and omissions constituting medical negligence on the part of the named Defendants, their agents, servants, employees and/or representatives in their individual and joint medical care and treatment of Pierre German as set out herein.

11. This is a Complaint for Health Care Liability alleging medical negligence on the part of the named Defendants, their agents, servants, employees and/or representatives, being the care providers of Pierre German at the Memphis VA Medical Center at Memphis, Shelby County, Tennessee resulting in the personal injuries, and the deterioration of health that would not have otherwise occurred but for the negligence on the part of the care providers as set out more fully in this Complaint.

FACTS

12. On or about January 7, 2020, Mr. German presented to the VA Hospital in Memphis, Tennessee. On this day, Joy Lynn Bermudez noted at 20:15 that Mr. German's chief

complaint (“CC”) was that he was told to go to the ER by another hospital in Maryland. Ms. Bermudez went on to note that Mr. German received a call from St. Agnes Hospital in Maryland and told him to go to the hospital immediately and see cardiology. Ms. Bermudez also noted that Mr. German’s only complaint at the time was slight dizziness. She also noted his vitals as: Temp. 98.1; Pulse 99; Respiratory Rate (“RR”) 15; BP 169/84. Subsequently, at 23:32 Maria F. Belarossistrunk noted that Mr. German had complaints of SOB, acid reflux, heartburn, nausea and vomiting.

13. At 00:09 on January 8, 2020 Albert Ndzengue, Mr. Shaw’s ER provider, documented his care and treatment. Mr. Ndzengue noted that Mr. German was treated for acute kidney injury (“AKI”) and uncontrolled DM. He then noted that Mr. German’s chief complaint was dizzy. Mr. Ndzengue noted Mr. German’s history of present illness (“HPI”) was that he was recently discharged from St. Agnes Hospital. He went on to note that Mr. German was seen there in the ER with gastroenteritis last Friday. Mr. Ndzengue also noted that Mr. German’s diarrhea and vomiting were improved since but he was concerned about feeling tired. He next noted that Mr. German believed he needed to see a cardiologist. Mr. Ndzengue also noted that Mr. German denied chest pain, SOB, cough or dizziness. He further documented Mr. German’s glucose as 369. Mr. Ndzengue then documented Mr. German’s course of treatment was that he was reassured and promised that he would get a stress test and for Mr. German to follow up with his PCP on January 15, 2020. Mr. Ndzengue diagnosed Mr. German with fatigue, hyperglycemia/DM, AKI, recent GERD/Gastritis.

14. Mr. German was next seen at the VA Hospital in the ER on January 14, 2020. The triage note was documented at 12:17 by Maureen Frances Seitz and she documented that Mr. German has an open wound and it has been present for a week and draining clear fluid. She also noted that Mr. German stated that both of his feet feel “tight” and feels like his skin is about to

“open up.” Linda Fletcher, R.N. at 15:43 noted that Mr. German was complaining of diabetic ulcer in his Left foot and that both feet feel tight. Nurse Fletcher also noted no edema and an accucheck reading of 159.

15. Dr. Chereese Ward-Washington, Mr. German’s ED provider documented care at 14:53. Dr. Washington noted that Mr. German’s CC was diabetic foot ulcer and gave a HPI of sore on Left foot and that Mr. German was not sure how it got there. Dr. Washington went on to document no fever or chills and no drainage. Dr. Washington next noted that Mr. German’s blood sugar has been real high and that all of Mr. German’s vitals appear to be normal. Dr. Washington noted an abrasion on Mr. German’s left foot measuring approximately 1” x 2” with no signs of infection. Dr. Washington also noted a blister on the base of Mr. German’s Right foot, with no signs of infection. Dr. Washington then discharged Mr. German home stable with instructions to see his PCP as scheduled and get a referral to podiatry.

16. Mr. German is noted to have seen his PCP on January 15, 2020. Edna S. Bagoyado documented her care at 13:02. She noted that Mr. German was seen in the VA ER in November 2019 for uncontrolled DM and again on January 14, 2020 for a foot abrasion. Ms. Bagoyado noted that Mr. German was given diabetic supplies and meds as well as dressing and supplies for his foot. Ms. Bagoyado also documented a PAVE foot exam (V9). She documented an abnormal thickened toe nails, bunions, callouses, healing blisters, pedal pulses normal/present and that the monofilament exam was abnormal with a 1/5 bilaterally. Ms. Bagoyado noted she referred Mr. German to podiatry. Mr. German was also administered the influenza vaccine at this visit by Ashlei V. Hickman at 14:26.

17. On January 30, 2020, Mr. German was again seen at the VA ER. The triage note was generated by Joy Lynn Bermudez at 00:04 on the 30th. She documented Mr. German’s temp. at 102.9 and a pulse of 101 and BP of 186/90. Nurse Bermudez noted at 01:40 that Mr. German

meets the sepsis criteria and that Dr. Tucker was notified. She also documented that Mr. German complained of tremors that started a few days ago and had gotten worse. Mr. German is also noted to have complained of a couple of episodes of diarrhea yesterday.

18. Dr. Tammie Moore Tucker is noted to be Mr. German's ER provider. Dr. Tucker noted she saw Mr. German at 00:33 and she documented that Mr. German's chief complaint were tremors of a 2-day duration of subjective fever chills. Dr. Tucker also noted that Mr. German 2 days ago had 5 bowel movements ("BM") with liquid stool. Dr. Tucker went on to document Mr. German did not have any complaints of abdominal pain, sore throat or cough. Dr. Tucker went on to note that Mr. German complains of chronic intermittent generalized weakness and lightheadedness upon standing from a seated position. Mr. German was diagnosed with influenza with gastrointestinal manifestations. Dr. Tucker also noted that influenza a and b were negative and that Mr. German's presentation was consistent with influenza. Dr. Tucker noted that she will treat Mr. German with Tamiflu 75mg twice a day. It was also noted that Mr. German had an episode of nausea and vomiting foodstuff after Tamiflu and Rocephin. It was further documented that Mr. German declined an antiemetic because he was no longer feeling nauseated. Dr. Tucker noted that she reviewed the CT results and that Mr. German could be discharged home. Mr. German is noted to be discharged home at 05:30 on the 30th.

19. Subsequently, Mr. Shaw was seen by podiatry at the VA Hospital in Memphis on February 13, 2020. Martinz Lazar was noted to have been Mr. German's care provider on this date. Mr. Lazar noted that Mr. German's chief complaints were diabetic foot exam and check on ulcers. Mr. Lazar noted that Mr. German complained of tingling and numbness in his feet but no burning and this does not bother him at night. Mr. Lazar noted an abrasion on Mr. German's lateral 5th Left metahead and lateral 5th Left met. He also noted dry skin on the bottom of both feet and metaheads. Mr. Lazar notes that Mr. German's ulcer's appear under control even though he states they have

not been treated. He continued on noting an apparent dried ulcer lateral 5th Left metahead which he states the ER said wasn't an ulcer. Mr. Lazar noted that it was too hard to measure old ulcers because they were pretty dry. He also documented that Mr. German had diminished pulses bilaterally, DP and PT. Mr. Lazar went on noting mild edema and diminished neuro status, with bilateral monofilament testing and Right vibratory. He also noted the Left vibratory was absent.

20. Mr. Lazar diagnosed Mr. German with diabetic neuropathy, onychomycosis, xerosis, calluses, and old appearing diabetic foot ulcers. The plan of treatment was to have Mr. German obtain orthotic inserts and diabetic shoes, educate him on foot evaluation, proper footcare, and hygiene among others. Also during this appointment, Mr. German underwent x-rays of his feet. The Left foot x-ray noted the following: hallux valgus deformity; calcaneal spurring posteriorly and inferiorly; irregularity of distal proximal fifth phalanx with associated dystrophic calcification favoring prior surgical intervention; soft tissue swelling; suspected ulceration along the lateral mid-foot and proximal fifth toe; vascular calcifications. This interpretation was signed by Randall L. Scott, M.D., staff radiologist and Trenton Willingham, resident.

21. After Mr. German's podiatry appointment on February 13, 2020 he was seen at the ER of Regional One Hospital on February 18, 2020. Between this time Mr. German was following the instructions of his VA care providers and doing as instructed. Mr. German's conditioned deteriorated to the point that he needed to go back to the hospital and presented to the ER at Regional One Hospital in Memphis on February 18, 2020 in the early evening.

22. Mr. German was noted to have been seen by Stacey M. Jolley, M.D. and Rachel Elizabeth Mitchell, M.D. at 20:54 on the 18th. Their note indicates that Mr. German's CC was that he has the shakes. They also noted that Mr. German went to the VA the last time he had a similar episode and they gave him fluids and diagnosed him with a possible accidental medication overdose. The doctors went on to note that Mr. German's history was that of diarrhea and chills

at night and diarrhea a week ago that was very profuse and that Mr. German feels dehydrated. Mr. German's vitals were T 37.6; P 118; RR 16; BP 134/73. The doctors' differential diagnosis included diarrhea, viral syndrome, dehydration, hypotension, polypharmacy, not gastroenteritis. They went on to note that Mr. German should be admitted for fluid resuscitation and that he had received 1L with improvement. They also noted that Mr. German's WBC was 16.1 and that they would defer to the medicine team for occult sepsis.

23. At 03:05 on February 19 multiple doctors examined Mr. German. They documented that Mr. German's diabetic foot ulcer may be the source of infection. It was also noted that the Left plantar surface ulcer was with brown eschar and very malodorous. It was also documented in the review of systems that Mr. German had fever, chills, confusion, dry ulcers on his feet, headaches, dizziness, and anemia. These doctors also noted that the x-ray of the Left foot was concerning for osteomyelitis and that they would get an MRI and an ABI by vascular surgery with labs ordered.

24. The x-ray of the Left foot performed on the 19th at 10:18 noted the following. The findings/impression was dystrophic cortical deformity involving the fifth proximal phalange with well-corticated margins; there is overlying soft tissue swelling and edema; subcutaneous air and swelling is seen; findings are highly concerning for infectious etiology; MRI would be more sensitive; edema and swelling extends along the dorsum and plantar aspect of the foot. The interpretation was signed by Dr. Muhammad Omer Afzal, M.D.

25. The MRI of the Left foot was noted to be performed on February 20, 2020 at 02:51. The MRI noted in the impression that there are features of cellulitis involving the forefoot; features suggesting a plantar soft tissue ulceration with underlying osteomyelitis of the head of the 5th metatarsal and adjacent septic arthritis of the metatarsophalangeal joint; early phlegmonous

changes are noted about the lateral aspect of the 5th metatarsal head without a well-defined soft tissue abscess.

26. Mr. German was next seen by Dr. Darwin Eton, M.D. for a vascular consult at 09:31 on the 20th. Dr. Eton noted the Left toe 5 with exposed metatarsal head surrounded by foul smelling pus inside maleperforans ulcer covered with cornified epithelium. Dr. Eaton also noted that he debrided at the bedside and maroon pus drained out with a foul odor and this extends into the plantar space. He also noted that the foot has normal tissue turgor, warmth and capillary refill suggesting good blood flow. He went on to document, however AT and PT signals are monophasic by doppler. Dr. Eton also documented that Mr. German was disappointed because he had been followed by the VA for foot complaints and that amputation couldn't be averted. He also noted that Mr. German needs urgent debridement and that for now he will just amputate toe 5 and open the plantar space. Dr. Eton went on and noted that Mr. German may need a below the knee amputation and angioplasty pending arterial study. The toe is noted to be amputated on February 21, 2020 by Dr. Eton.

27. Mr. German ultimately was discharged on February 28, 2020. He has returned on two separate occasions. Once on March 1 to have his wound vac recharged. The second return was for the below the knee amputation on July 22, 2020.

TORTS-MEDICAL NEGLIGENCE AND DEVIATIONS FROM THE STANDARD OF CARE

28. It is the claim of Mr. German that the VAMC located in Memphis, Shelby County, Tennessee, by the acts and omissions of its treating physicians, medical personnel, staff, agents, representatives and/or employees to include, but not limited to the identified care providers in this Complaint and as otherwise may be determined or discovered from the medical records of Plaintiff, Pierre German, maintained by the Defendants, United States of America, and United States of

America d/b/a Memphis VA Medical Center, and others not yet known or identified from the medical records and that may be identified later, breached the standard of care for the medical community of Memphis, Shelby County, Tennessee and as such directly and proximately caused the tortious injuries and damages of a past, present and permanent nature that Plaintiff, Pierre German, would not have otherwise sustained except for the negligent deviations from the standard of care on the part of the treating physicians, medical personnel, staff and/or employees being any and all care providers of Mr. Pierre German (e.g. physicians, nurses, radiologists, technicians and otherwise) at the VA Medical Center in Memphis in the following particulars:

- (1) Negligently failing to timely detect osteomyelitis of the 5th Left phalanges of the Left foot;
- (2) Negligently failing to timely detect plantar space abscess;
- (3) Negligently failing to timely drain and debride 5th toe injury;
- (4) Negligently failing to timely detect and/or diagnosis peripheral artery disease (“PAD”);
- (5) Negligently failing to timely perform lower extremity angiography;
- (6) Negligently failing to timely diagnosis multilevel occlusive disease;
- (7) Negligently failing to timely detect Mr. German’s 5th toe infection;
- (8) Negligently interpreting the February 13, 2020 x-ray of Mr. German’s Left foot;
- (9) Negligently discharging Mr. German on January 30, 2020;
- (10) Negligently failing to address Mr. German’s complaints of unexplained lower extremity ulcers;
- (11) Negligently misdiagnosing Mr. German’s condition on February 13, 2020;
- (12) Negligently treating Mr. German’s foot abrasion on January 14, 2020;

(13) Negligently failing to timely refer Mr. German to vascular surgery prior to the need for amputation.

INJURIES AND DAMAGES

29. As a direct and proximate result of the medical negligence on the part of the named Defendants, United States of America, United States of America d/b/a/ Memphis VA Medical Center, and said Defendants' employees, agents, servants, and/or representatives being the care providers of Plaintiff, Pierre German at Memphis VA Medical Center and as otherwise may be determined or discovered from the medical records of Plaintiff, Pierre German, maintained by the Defendants, United States of America, and United States of America d/b/a Memphis VA Medical Center, and others not yet known or identified from the medical records and that may be identified later, Plaintiff, Mr. German sustained the following injuries and damages for which he seeks recovery:

- (a) Unnecessary physical pain and suffering;
- (b) Unnecessary emotional pain and suffering sustained;
- (c) Past, present and future medical expenses that would not have been necessary but for the negligence;
- (d) Loss of use of Mr. German's left foot;
- (e) Loss of enjoyment and quality of life;
- (f) Unnecessary permanent impairment;
- (g) Depression;
- (h) any and all other relief as justice requires under the facts of the case.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Pierre German, files this action for Health Care Liability against the Defendants, United States of America and United States of

America d/b/a Memphis VA Medical Center and said Defendants' employees, agents, servants, and/or representatives being the care providers of Plaintiff, Pierre German at the Memphis VA Medical Center, for compensatory damages for unnecessary pain and suffering, unnecessary emotional pain and suffering, and as otherwise noted above, in the amount of one million (\$1,000,000.00) dollars.

Respectfully submitted this 13th day of September 2021,

s/ Louis P. Chiozza, Jr.

Louis P. Chiozza, Jr., BPR# 8871

Christopher W. Lewis, BPR 031497

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